IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. No. 925 of 1992.
Date of Decision: December 15, 2006.

Sultan Singh

....**Appellant**

through
Mr. Ram Chander, Advocate

Versus

Krishan Lal & Ors.

...**Respondents**
through
Mr. Ravinder Arora, Advocate,
Mr. Anil Khetarpal, Advocate,
for respondents NO. 2 and 3.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.

This appeal is directed against the award dated 6.2.1992 passed by the Motor Accident Claims Tribunal, Kurukshetra whereby the appellant's claim petition has been partly allowed.

FACTS:-

The appellant is working as a Conductor in the Haryana Roadways. As per the averments made in the claim petition, the appellant was standing on the Kacha berm of the Kurukshetra-Saharanpur road in front of the Bus Stand of village Mathana Chowki on 24.11.1990 at 10 AM when a tempo bearing registration No.HNK-4423 being driven in a rash and

negligent manner by respondent No.1, came from Pipli side and struck against the appellant, resulting into multiple injuries to him including three fractures. The appellant remained hospitalised from 24.11.1990 to 17.12.1990 in the LNJP Government Hospital at Kurukshetra and despite the best of treatment, he became permanently disabled. The appellant accordingly sought a compensation to the tune of Rs.1.5 lacs.

Respondent No.1-Driver of the Tempo contested the claim petition and took a preliminary objection that the accident was caused due to negligence of the appellant himself, who suddenly came in front of the tempo from the wrong side (front of the bus) in such a manner that no amount of vigilance or alertness could have avoided the accident.

On the basis of the pleadings of the parties, the following issues were framed by the Tribunal:-

> "1. Whether the accident in question took place due to rash and negligent driving of Krishan Lal-respondent No.1 driver of Tempo bearing Registration No.HNK-4423 resulting in injuries to Sultan Singh claimant?OPP
>
> 2. If issue No.1 is proved, what amount of compensation is the claimant entitled to and from whom?OPP
>
> 3. Relief".

While deciding Issue No.1, the Tribunal has held that the accident was caused due to contributory negligence of the appellant-claimant. Consequently, even after holding that the appellant was entitled to a compensation of Rs.30,000/-, the Tribunal, vide the impugned award, has awarded him an amount of Rs.15,000/- along with interest @ 12% per

annum. The aforesaid compensation has been awarded by the Tribunal after holding that as a result of the accident, the appellant suffered three fractures and remained hospitalised for 23 days and is permanently disabled to the extent of 8 to 10%.

I have heard learned counsel for the appellant in support of the appeal and perused the record.

The only question to be gone into is as to whether or not the appellant was also responsible for causing the accident in question. From the pleadings and evidence on record, I am of the considered view that no exception can be taken to the view formed by the learned Tribunal in this regard. While in the claim petition, the appellant has averred that he was standing on the kacha berm on the right side of the road when the delinquent tempo struck against him, in his statement as PW1 he has deposed that while on duty en-route from Kaithal to Yamuna Nagar, some passengers alighted from the Bus at Mathana Chowk to whom he owed some balance, he went to the nearby shops across the road in order to get some change and it was while he was crossing the road that the Tempo coming from Pipli side struck against him.

The aforementioned deposition of the appellant fortifies the categoric stand taken by respondent No.1 in his written statement as well as deposition that the appellant suddenly came on the road from a wrong side and the accident could not have been avoided despite due diligence.

The accident took place at the bus stop and was witnessed by several passengers and shopkeepers. The appellant has not produced any witness whatsoever to controvert the positive stand taken by respondent No.1. In this view of the matter, the Tribunal appears to be right in

observing that the appellant is also responsible for causing the accident in question and, therefore, his entitlement has been rightly restricted to the extent of 50% of the assessed compensation amount.

Consequently, I do not find any merit in this appeal and dismiss the same, leaving, however, the parties to bear their own costs.

December 15, 2006. **(SURYA KANT)**
dinesh **JUDGE**